

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

MISSION ROCK COMPANY (A CORPOR-
ATION),

Plaintiff in Error,

VS.

THE UNITED STATES OF AMERICA,


Defendant in Error.

TRANSCRIPT OF RECORD.

In Error to the Circuit Court of the United States of the
Ninth Judicial Circuit, in and for the Northern
District of California.

FILED

FEB 11 1901



Digitized by the Internet Archive
in 2010 with funding from
Public.Resource.Org and Law.Gov

Receipts of General

Account of Appeals

186

INDEX.

	Page
Amended and Supplemental Complaint.....	12
Amended and Supplemental Complaint, Answer to.	17
Answer	6
Answer to Amended and Supplemental Complaint..	17
Assignment of Errors	40
Bill of Exceptions	37
Certificate, Clerk's, to Record.....	50
Certificate to Judgment-roll.....	31
Citation	54
Clerk's Certificate to Record	50
Complaint, Amended and Supplemental	12
Complaint in Ejectment	1
Cost Bond and Supersedeas on Writ of Error.....	45
Errors, Assignment of	40
Exceptions, Bill of	37
Finding, Stipulation and Supplemental.....	26
Findings	20
Findings, Judgment on	28
Judgment on Findings	28
Judgment-roll, Certificate to	31

	Page
Opinion	32
Order Allowing Writ of Error	40
Order Staying Proceedings	44
Order Substituting Defendant	11
Petition for Writ of Error	38
Staying Proceedings, Order	44
Stipulation and Supplemental Finding.....	26
Stipulation of Parties Substituting Defendant.....	10
Stipulation Waiving Trial by Jury	9
Summons	4
Supersedeas and Cost Bond on Writ of Error.....	45
Writ of Error	51
Writ of Error, Order Allowing	40
Writ of Error, Petition for	38
Writ of Error, Supersedeas and Cost Bond on.....	45

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

AT LAW.

THE UNITED STATES OF AMER-
ICA,

Plaintiff,

vs.

THE CALIFORNIA DRY DOCK COM-
PANY (a Corporation),

Defendant.

Complaint in Ejectment.

Now comes the said plaintiff, the United States of America, and complains of the said defendant, and for cause of action alleges:

I.

That the defendant, The California Dry Dock Company, has, at all the times in this complaint mentioned, been, and now is, a corporation, duly organized and existing under and by virtue of the laws of the State of California, and is a citizen and resident of said State and Northern District of California.

II.

That heretofore, to wit, on the 2d day of January, 1870, the said plaintiff was, and for a long time previous there-

to had been, and continuously since has been, and now is, the owner and seised in fee, and entitled to the possession, of all that certain tract of land situate in the State and Northern District of California, and described as follows, to wit:

Commencing at a point in the bay of San Francisco, State and Northern District of California, distant 3,570 feet southeasterly from the southerly corner of Brannan and Second streets, said distance being measured along the extension, southeasterly of the southwesterly line of Second street; thence in a southwesterly direction at right angles with said line of Second street extended, 500 feet; thence at right angles southeasterly 800 feet; thence at right angles northeasterly 800 feet; thence at right angles northwesterly 800 feet; thence at right angles southwesterly 300 feet to the point of commencement.

Said tract of land being a square including the rock known as Mission Rock, and containing 14.69-100 acres, more or less, and being a fractional part of the westerly half of section 11, township 2 south, range 5 west, Mount Diablo base and meridian.

III.

That afterward, to wit, on the 1st day of May, 1878, and while the plaintiff was the owner of and entitled to the possession of said tract of land as aforesaid, the said defendant wrongfully and unlawfully entered into and upon the same, and ousted and ejected the plaintiff therefrom and from the whole thereof, and from thence to the

present time has wrongfully and unlawfully withheld, and now wrongfully and unlawfully withholds possession of said premises from the plaintiff to its damage in the sum of two hundred and fifty thousand (\$250,000) dollars.

IV.

That the plaintiff is informed and believes, and upon such information and belief so avers, that the value of the rents, issues, and profits of said tract of land, ever since the said wrongful and unlawful entry of the defendant thereon, has been, and now is, the sum of five thousand (\$5,000) dollars per annum.

Wherefore, the said plaintiff prays for judgment against the said defendant for the possession of all of the said tract of land aforesaid, and for the sum of two hundred and fifty thousand (\$250,000) dollars, for the damages aforesaid, and for one hundred and five thousand (\$105,000) dollars for the value of the rents, issues, and profits aforesaid, and for costs of suit.

FRANK L. COOMBS,
United States Attorney,
Attorney for Plaintiff.

MARSHALL B. WOODWORTH,
Assistant United States Attorney,
Of Counsel.

[Endorsed]: Filed September 21, 1899. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Circuit, Northern
District of California.*

THE UNITED STATES OF AMER-
ICA,

Plaintiff,

vs.

THE CALIFORNIA DRY DOCK COM-
PANY (a Corporation),

Defendant.

Action brought in the said Circuit Court, and the Com-
plaint filed in the office of the Clerk of said Circuit
Court, in the City and County of San Francisco.

Summons.

The President of the United States of America, Greet-
ing, to the California Dry Dock Company (a Corpora-
tion), Defendant.

You are hereby directed to appear and answer the
complaint in an action entitled as above, brought against
you in the Circuit Court of the United States, Ninth Cir-
cuit, in and for the Northern District of California, with-
in ten days after the service on you of this summons, if

served within this county; or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said plaintiff will take judgment for any money or damages demanded in the complaint, as arising upon contract, or it will apply to the Court for any other relief demanded in the complaint.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 21st day of September, in the year of our Lord one thousand eight hundred and ninety-nine, and of our Independence the one hundred and twenty-fourth.

[Seal]

SOUTHARD HOFFMAN,

Clerk.

By W. B. Beazley,

Deputy Clerk.

[Endorsed]:

United States Marshal's Office, }
Northern District of California, }

I hereby return that I received the within writ on the 21st day of September, 1899, and personally served the same on the 22d day of September, 1899, upon The California Dry Dock Company (a corporation), by delivering to, and leaving with John Meyer, president of said The California Dry Dock Company (a corporation), said defendant named therein personally, at the city and county

of San Francisco, in said District, an attested copy thereof, together with a copy of the complaint certified to by the United States Attorney attached thereto.

San Francisco, September 22d, 1899.

JOHN H. SHINE,
United States Marshal.
By S. P. Monckton,
Office Deputy.

Filed September 22d, 1899. Southard Hoffman, Clerk.
By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States for the Ninth Circuit, Northern District of California.

THE UNITED STATES,

Plaintiff,

vs.

THE CALIFORNIA DRY DOCK COMPANY,

Defendant.

Answer.

Now comes The California Dry Dock Company, defendant in the above-entitled cause, and answering unto the complaint of the plaintiff therein avers as follows:

I.

It admits that the defendant is and has been a corporation as averred in said complaint.

II.

It denies that on the second day of January, 1870, the plaintiff was, or for a long time previous thereto had been, or continuously since or at any time since has been or now is the owner or seised in fee, or entitled to the possession of all or any part of the land described in the complaint.

III.

It denies that on the first day of May, 1878, or at any time, while the plaintiff was the owner or entitled to the possession of the said land or otherwise, it wrongfully or unlawfully entered in or upon the same, or ousted or ejected the plaintiff therefrom or the whole or any part thereof, or that from thence to the present time, or that at any time, it has wrongfully or unlawfully withheld, or that it now wrongfully or unlawfully withholds possession of said premises, or any part thereof from the plaintiff, to its damage in the sum of two hundred and fifty thousand dollars or any sum whatsoever.

The defendant further answering avers that it, the defendant, has been since the first day of May, 1878, and now is seised and the owner in fee of the said premises and in the lawful possession thereof, and that no other person or corporation is the owner thereof and that the plaintiff was not at the time alleged in the complaint, or at any time since said date, and is not now, the owner or entitled to the possession of the said premises, or any part thereof.

IV.

It denies that the value of the rents, issues, and profits of the said lands have been or are the sum of five thousand dollars per annum or any sum. And it further denies that it at any time entered unlawfully upon the said land.

Wherefore, the defendant prays judgment that the complaint be dismissed.

PAGE, McCUTCHEN, HARDING & KNIGHT,
Attorneys for Defendant.

I hereby certify that in my opinion the foregoing answer is well founded in point of law.

CHAS. PAGE,
One of the Counsel for Defendant.

[Endorsed]: Service of a copy of the within answer is hereby admitted this 3d day of November, 1899.

FRANK L. COOMBS,
Attorney for Plaintiff.

Filed November 3d, 1899. Southard Hoffman, Clerk.
By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

THE UNITED STATES OF AMER-
ICA,

Plaintiff,

vs.

THE CALIFORNIA DRY DOCK COM-
PANY,

Defendant.

No. 12,817.

Stipulation Waiving Trial by Jury

Now comes the plaintiff, by Frank L. Coombs, United States Attorney, and Marshall B. Woodworth, Assistant United States Attorney for the Northern District of California, its attorneys, and the defendant by Messrs. Page, McCutchen, Harding and Knight, its attorneys, and waives a jury in the above-entitled cause, and stipulate that said cause be tried by the Court sitting without a jury.

FRANK L. COOMBS,

United States Attorney, for Plaintiff.

MARSHALL B. WOODWORTH,

Assistant United States Attorney, for Plaintiff.

PAGE, McCUTCHEN, HARDING & KNIGHT,

Attorneys for Defendant.

[Endorsed]: Filed July 27th, 1900. Southard Hoffman, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

THE UNITED STATES,

Plaintiff,

vs.

CALIFORNIA DRY DOCK COM-
PANY,

Defendant.

Stipulation of Parties Substituting Defendant.

It is hereby stipulated and agreed that pending the hearing of this cause, the defendant California Dry Dock Company sold and transferred to the Mission Rock Company, a corporation, its title to the property sued for therein and that the Mission Rock Company thereupon entered into and now has the sole possession thereof. It is stipulated that the Mission Rock Company may be substituted as defendant in this action as of the date of June seventh, 1900, and that all proceedings herein be continued as against the said substituted defendant with the same force and effect as they would have against the original defendant, if no substitution had been made.

It is further stipulated that the appearance of Messrs. Page, McCutchen, Harding & Knight as attorneys for the Mission Rock Company is hereby entered and that

amended and supplemental pleadings as may be ordered by the Court be filed against the Mission Rock Company.

FRANK L. COOMBS and

MARSHALL B. WOODWORTH,

Attorneys for Plaintiff.

PAGE, McCUTCHEN, HARDING & KNIGHT,

Attorneys for Defendant.

Order Substituting Defendant.

On reading and filing the foregoing stipulation, and it appearing to the Court that since the submission of this cause all the title of The California Dry Dock Company in and to the property sued for in this cause has been sold and transferred to the Mission Rock Company, a corporation, and that said last-named company is in sole possession of the said property, and it further appearing that the Mission Rock Company is the proper party to this suit and should be substituted as defendant in place of The California Dry Dock Company, and it further appearing that said Mission Rock Company by Page, McCutchen, Harding & Knight, its attorneys, and attorneys for The California Dry Dock Company, applies for the said substitution and that the attorneys of the United States consent:

It is ordered as follows: That the Mission Rock Company be, and it is hereby, substituted as defendant in this cause in place of The California Dry Dock Company,

nunc pro tunc, as of June 7th, 1900, and that all proceedings in this cause be taken and this cause continued against the Mission Rock Company, as such substituted defendant.

It is further ordered that amended and supplemental pleadings be filed in this cause against the Mission Rock Company as defendant, and that the said defendant make answer thereto, and that the same be filed as of June 7, 1900, nunc pro tunc.

JAS. H. BEATTY,
Judge.

[Endorsed]: Filed January 11, 1901. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

MISSION ROCK COMPANY (a Corporation),
Substituted for The California
Dry Dock Company (a Corporation),
Defendant.

Amended and Supplemental Complaint.

Now comes the plaintiff, the United States of America, and by leave of Court first had and obtained, files this its amended and supplemental complaint, and alleges:

I.

That the defendant, Mission Rock Company, is, and at all times since a period anterior to June 6th, 1900, has been a corporation organized and existing under and by virtue of the laws of the State of California and is a citizen and resident of said State and Northern District of California.

II.

That heretofore, to wit, on the 2d day of January, 1870, the said plaintiff was, and for a long time previous thereto had been, and continuously since has been and now is, the owner and seised in fee, and entitled to the possession. of all that certain tract of land situate in the State and Northern District of California and described as follows, to wit:

Commencing at a point in the bay of San Francisco, State and Northern District of California, distant 3.570 feet southeasterly from the southerly corner of Brannan and Second streets, said distance being measured along the extension, southeasterly of the southwesterly line of Second street; thence in a southwesterly direction at right angles with said line of Second street, extended. 500 feet; thence at right angles southeasterly 800 feet; thence at right angles northeasterly 800 feet; thence at right angles northwesterly 800 feet; thence at right angles southwesterly 300 feet to the point of commencement.

Said tract of land being a square including the rock known as Mission Rock and containing 14 69-100 acres.

more or less, and being a fractional part of the westerly half of section 11, township 2 south, range 5 west, Mount Diablo base and meridian.

III.

That afterwards, to wit, on the 1st day of May, 1878, and while the plaintiff was the owner of and entitled to the possession of said tract of land as aforesaid, the said The California Dry Dock Company wrongfully and unlawfully entered into and upon the same, and ousted and ejected the plaintiff therefrom and from the whole thereof, and from thence up to the 6th day of June, 1900, wrongfully and unlawfully withheld possession of the said premises, from the plaintiff to its damage in the sum of two hundred and fifty thousand (250,000) dollars.

That prior to said sixth day of June, 1900, to wit, on or about the 21st day of September, 1899, this plaintiff brought in this court its certain action of ejectment against the said The California Dry Dock Company for the recovery of the possession of the premises aforesaid and for damages as aforesaid, which said action was on the said sixth day of June, 1900, still pending and undetermined in this court.

That on said sixth day of June, 1900, the said The California Dry Dock Company executed a written instrument of deed and delivered the same to the Mission Rock Company, defendant herein, wherein and whereby it purported to convey to the said defendant all of the lands and premises hereinbefore described and sued for by this plaintiff, and the said defendant thereupon entered into

possession of the said premises and now wrongfully and unlawfully withholds the same from the plaintiff to its damage in the sum aforesaid.

IV.

That heretofore, to wit on the —— day of December, 1900, this Honorable Court on stipulation of the parties in the said cause originally pending herein, and on the request and motion of counsel of the Mission Rock Company, then and there duly authorized to enter an appearance for the Mission Rock Company, defendant, made and entered an order in said cause substituting the Mission Rock Company as defendant in place of The California Dry Dock Company, previously defendant therein as aforesaid, and ordering that all further proceedings in said cause be continued against said Mission Rock Company, in place of the California Dry Dock Company, and that the plaintiff be authorized to file in said cause an amended and supplemental complaint against the Mission Rock Company, defendant, substituted as aforesaid, and that the said defendant enter its appearance therein, and answer the said amended and supplemental complaint.

V.

That the plaintiff is informed and believes, and upon such information and belief so avers, that the value of the rents, issues, and profits of said tract of land, ever since the said wrongful and unlawful entry of the defendant thereon, has been, and now is, the sum of five thousand (5,000) dollars per annum.

Wherefore the said plaintiff prays for judgment against the said defendant for the possession of all the said tract of land aforesaid, and for the sum of two hundred and fifty thousand (250,000) dollars for the damages aforesaid, and for one hundred and five thousand (105,000) dollars, for the value of the rents, issues and profits aforesaid, and for costs of suit.

FRANK L. COOMBS,

United States Attorney,

And MARSHALL B. WOODWORTH,

Assistant United States Attorney.

[Endorsed]: Service of the within amended and supplemental complaint by copy admitted this 27th day of December, 1900.

PAGE, McCUTCHEN, HARDING & KNIGHT,

Attorneys for Defendant.

Filed January 11, 1901, nunc pro tunc as of June 7, 1900. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

In the Circuit Court of the United States, for the Ninth Circuit, Northern District of California.

THE UNITED STATES,

Plaintiff,

vs.

MISSION ROCK COMPANY (a Corporation), Substituted for The California Dry Dock Company (a Corporation),

Defendant.

Answer to Amended and Supplemental Complaint.

Now comes the Mission Rock Company, defendant in the above-entitled cause, substituted for The California Dry Dock Company, and answering unto the amended and supplemental complaint of the plaintiff avers as follows:

I.

It admits that the defendant is and has been a corporation as averred in the complaint.

II.

It denies that on the second day of January, 1870, the plaintiff was, or for a long time previous thereto had been, or continuously since or at any time since has been or now is the owner or seised in fee, or entitled to the possession of all or any part of the land described in the complaint.

III.

It denies that on the first day of May, 1878, or at any time, while the plaintiff was the owner or entitled to the possession of the said land or otherwise, The California Dry Dock Company unlawfully entered in or upon the same, or ousted or ejected the plaintiff therefrom, or the whole or any part thereof, or that the said The California Dry Dock Company from thence up to the 6th day of June, 1900, or at any time, wrongfully or unlawfully withheld possession of the said premises, or any part therefrom, from the plaintiff to its damage in the sum alleged, or in any sum.

The defendant admits that prior to the said sixth day of June, 1900, to wit, on or about the 21st day of September, 1899, the plaintiff brought in this court the action in the amended and supplemental complaint described and that said action was on the sixth day of June, 1900, pending and undetermined in this court, and it admits that on said day The California Dry Dock Company executed and delivered to this defendant the instrument of conveyance in said complaint described and that the defendant thereupon entered into possession of the said premises and that it now withholds the same from the plaintiff; but it denies that it withholds the same to the damage of the plaintiff in the sum alleged or in any sum.

The defendant further avers that the said The California Dry Dock Company, grantor of this defendant was from the first day of May, 1878, and up to the sixth day of June, 1900, seised and owner in fee of the premises

sued for, and that since said date this defendant, as its grantee, has been and now is seised and owner in fee and in the lawful possession thereof, and that no other person or corporation is the owner thereof, and that the plaintiff was not at the time alleged in the amended and supplemental complaint or at any time since said date, and is not now the owner or entitled to the possession of the said premises, or any part thereof.

IV.

It denies that the value of the rents, issues, and profits of the said lands have been or are the sum of five thousand dollars per annum or any sum, and it further denies that it at any time entered unlawfully upon the said land.

Wherefore, it prays judgment that plaintiff's action be dismissed.

PAGE, McCUTCHEN, HARDING & KNIGHT,
Attorneys for Defendant.

[Endorsed]: Service of a copy of the within answer is hereby admitted this 10th day of January, 1901.

MARSHALL B. WOODWORTH and
FRANK L. COOMBS,
Attorneys or Plaintiff.

Filed January 11, 1901, nunc pro tunc as of June 7, 1900. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

THE UNITED STATES

Plaintiff.

vs.

MISSION ROCK COMPANY, Substi-
tuted for California Dry Dock Com-
pany,

Defendant.

Findings.

The above cause having come on regularly to be heard before the Court, a jury having been waived, the Court having heard and considered the pleadings and the evidence, hereby files its findings of fact and conclusions of law:

I.

The defendant, Mission Rock Company, is and since a date anterior to June 6, 1900, was a corporation organized and existing under the laws of the State of California and pending the hearing of this cause, became, by virtue of a deed of grant, bargain and sale from The California Dry Dock Company, dated June 6th, 1900, the owner of all the title and interest of The California Dry Dock Company in and to the premises in controversy, and thereupon entered into and now holds the possession of the same.

On request of the Mission Rock Company and proof of the fact that the said Company had acquired the interest of The California Dry Dock Company in the lands sued for and by consent of the plaintiff, this Court made an order substituting the Mission Rock Company for The California Dry Dock Company as defendant and continuing this action against said Mission Rock Company as defendant.

II.

At the date of the admission of the State of California into the Union, the premises sued for consisted of two rocks or islands adjacent to one another and projecting above the plane of ordinary high water in the Bay of San Francisco, the larger of which rose to a height of more than twenty and less than forty feet above such high water. Also of other lands contiguous thereto and surrounding said rocks or islands which were completely submerged and over which the daily tides continuously flowed and ebbed. The rocks or islands referred to are laid down on the chart in this cause marked Exhibit "A."

III.

The areas of these rocks or islands above ordinary high-water mark, at the time of the admission of the State of California into the Union, were as follows: The one on the chart called "Mission Rock" had an area of fourteen one-hundredths (14-100) of an acre; the other had an area of one one-hundredth (1-100) of an acre. These rocks or islands rose abruptly out of the Bay of San Francisco. Their sides to the extent that they were

covered and uncovered by the flow and ebb of the tide, varied from ten to twenty-five feet; depending on their steepness. Both rocks were barren, without soil or water and were of no value for purposes agricultural or mineral. They lay at a distance of about half of a mile from the then shore line of that part of the bay upon which the city of San Francisco fronted. Navigable water divided and still divide the lands sued for from the mainland and surrounded and now surround them.

IV.

The lands described in the complaint were not, at the date of the admission of the State of California into the Union, within the boundaries of any valid private or pueblo grant of lands of the Spanish or Mexican Governments.

V.

No approved plat of the exterior limits of the city of San Francisco, as provided by the terms of section 5 of the act of July 1, 1864, (13 Stat. 332), has been filed or rendered to the general land office of the United States, or of the State of California. The lands sued for in this action are within such exterior limits.

VI.

On the thirteenth day of January, 1899, the President of the United States, purporting to act in conformity with the act of July 1, 1864 already referred to, issued the following order:

“EXECUTIVE MANSION.

“January 13, 1899.

“It is hereby ordered that Mission Island and the small island southeast thereof, designated on the official plat on file in the general land office, approved October 12, 1898, as lots 1 and 2 of section 11, township 2 south, range 5 west, Mount Diablo meridian, California, containing, according to the plat, fourteen one-hundredths of an acre and one one-hundredth of an acre, respectively, be, and they are hereby, declared as permanently reserved for naval purposes.

“WILLIAM McKINLEY.”

VII.

On the — day of March, 1864, the United States surveyor general for the State of California extended the public surveyors so as to comprehend and include the rocks or islands and the lands in controversy in the present suit.

VIII.

On April 4th, 1870, the governor of the State of California approved an act of the legislature of the State entitled “An act to provide for the sale and conveyance of certain submerged lands in the city and county of San Francisco to Henry B. Tichenor,” which act was printed in the Statutes of California for the years 1870-1871, at page 801, is hereby referred to and made part hereof.

The lands therein described include the lands sued for in this action.

On the 11th day of July, 1872, the State of California, in conformity with said act, issued its patent for the said

lands to said Henry B. Tichenor, purporting to convey the same to him. Said patent was duly recorded in liber 1 of Records of Patents, page 66.

After execution of the said patent, the said Tichenor executed and delivered a deed of grant, bargain and sale, dated May 1st, 1878, purporting to convey the said lands to the California Dry Dock Company, which thereafter on the 6th day of June, 1900, executed and delivered to the Mission Rock Company, the defendant, a like deed to the said lands. The last-named company has not since said date conveyed to any person or corporation the said lands.

IX.

The California Dry Dock Company, upon going into possession of said lands so conveyed undertook the improvement of the same by filling in portions of the submerged lands immediately around and contiguous to said islands or rocks, with many thousands of tons of rock, thus increasing the available area of said lands to about four acres, upon which extensive warehouses were built by it and wharves erected for the accommodation of shipping.

Since the issuance of the state patent hereinbefore referred to, the patentee thereof up to May 1st, 1878, The California Dry Dock Company from said time to the 6th day of June, 1900, and the defendant from said last named date to the present time, have been in continuous and uninterrupted possession of the said lands, using the same and the improvements thereon for commercial purposes, and claiming to be the absolute owner thereof.

X.

On April 7th, 1890, Col. Geo. H. Mendell, then in charge of the corps of engineers of the United States Army on the Pacific Coast, caused to be served on the California Dry Dock Company the following notice:

“United States Engineer Office,

“No. 533 Kearny Street,

“San Francisco, Cal., April 7th, 1890.

“Captain Oliver Eldridge,

President California Dry Dock Company, 303 California Street, San Francisco, Cal.

“Sir:—Under the provisions of section 12 of the River and Harbor Act of August 11th, 1888 (a copy of which is enclosed), a board of engineer officers was appointed to establish the harbor lines of San Francisco harbor and adjacent waters. There is transmitted herewith, for your information, a map, upon which are shown the limiting lines of wharves and the line beyond which no deposits shall hereafter be made, at Mission Rock, as established by the board and approved by the Secretary of War March 24th 1890.

“Very respectfully,

“G. H. MENDELL,

“Colonel, Corps of Engineers.”

The limits referred to in the above letter and delineated on the map, are in effect the limits of “Mission Rock” as improved at that time.

CONCLUSIONS OF LAW.

Upon the foregoing facts, I find that the title to the lands described in the complaint is in the United States and that it is entitled to judgment for the possession thereof. Let judgment be entered accordingly.

JAS. H. BEATTY,
Judge.

Agreed to.

PAGE, McCUTCHEN, HARDING & KNIGHT,
Attorneys for Defendant.

FRANK L. COOMBS and
MARSHALL B. WOODWORTH,
Attorneys for Plaintiff.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

THE UNITED STATES,	}
Plaintiff,	
vs.	
MISSION ROCK COMPANY, Substi-	}
tuted for California Dry Dock Com-	
pany,	
Defendant.	

Stipulation and Supplemental Finding.

It is hereby stipulated and agreed by and between counsel for the respective parties hereto that the following supplemental finding of fact may be, and is hereby

made part of the findings heretofore signed by Hon. James H. Beatty and agreed to by counsel for the respective parties, just as if the same had been originally incorporated in said findings, signed and agreed to as aforesaid; and said parties hereby expressly waive any and all manner of objection to said supplemental finding or to any other matter or thing connected therewith.

Dated January 10, 1901.

FRANK L. COOMBS,

United States Attorney, for Plaintiff.

PAGE, McCUTCHEM, HARDING & KNIGHT,

Attorneys for Defendant.

Said supplemental finding of fact as hereby agreed to is as follows:

The title of the United States, as successor of the Mexican Republic under the Treaty of Guadalupe Hidalgo, to the land in controversy, has not since been divested by patent or other conveyance, and the title thereto is still in the United States, unless the same passed to the State of California by virtue of the admission of the State under the act of Congress, or unless the United States relinquished title thereto under subsequent acts of Congress.

JAS. H. BEATTY,

Judge.

[Endorsed]: Filed January 23, 1901. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Judicial
Circuit, Northern District of California.*

THE UNITED STATES OF AMER-
ICA,

Plaintiff,

vs.

MISSION ROCK COMPANY (a Corpo-
ration), Substituted for California Dry
Dock Company (a Corporation),

Defendant.

No. 12,817.

Judgment on Findings.

This cause came on regularly for trial upon the third day of August, 1900, being a day in the July, 1900, term of said Court, before the Court sitting without a jury, a trial by jury having been duly waived by stipulation of the attorneys for the respective parties filed herein. Frank L. Coombs Esq., United States Attorney, and Marshall B. Woodworth, Esq., Assistant United States Attorney, appeared upon behalf of the plaintiff and Charles Page, Esq., appeared upon behalf of the defendant, and thereupon evidence oral and documentary upon behalf of the respective parties was introduced and closed, and the cause after arguments of the attorneys, was submitted to

the Court for consideration and descision. And the Court, after due deliberation having filed its findings in writing and ordered that judgment be entered herein in accordance therewith:

Now, therefore, by virtue of the law and by reason of the findings aforesaid, it is considered by the Court that the United States of America, plaintiff herein, have and recover of and from Mission Rock Company, a corporation, defendant herein, the possession of all that certain tract of land situate in the State and Northern District of California, and described as follows, to wit:

Commencing at a point in the bay of San Francisco, State and Northern District of California, distant 3,570 feet southeasterly from the southerly corner of Brannan and Second streets, said distance being measured along the extension, southeasterly of the southwesterly line of Second street; thence in a southwesterly direction at right angles with said line of Second street, extended, 500 feet; thence at right angles southeasterly 800 feet; thence at right angles northeasterly 800 feet; thence at right angles northwesterly 800 feet; thence at right angles southwesterly 300 feet to the point of commencement.

Said tract of land being a square including the rock known as Mission Rock and containing 14 69-100 acres, more or less, and being a fractional part of the westerly

half of section 11, township 2 south, range 5 west, Mount Diablo base and meridian.

And it is further considered and adjudged that said plaintiff recover from said defendant its costs in this behalf expended taxed at \$48.40.

Judgment entered January 23d, 1901.

SOUTHARD HOFFMAN,

Clerk.

A true copy.

Attest:

[Seal]

SOUTHARD HOFFMAN,

Clerk.

By W. B. Beazley,

Deputy Clerk.

[Endorsed]: Filed January 23, 1901. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Judicial
Circuit, in and for the Northern District of California.*

THE UNITED STATES OF AMERICA,	} Plaintiff,	} No. 12,817.
vs.		
MISSION ROCK COMPANY (a Corporation),	} Defendant.	

Certificate to Judgment-Roll.

I, Southard Hoffman, Clerk of the Circuit Court of the United States, for the Ninth Judicial Circuit, Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the above-entitled action.

Attest my hand and the seal of said Circuit Court, the 23d day of January 1901.

[Seal]

SOUTHARD HOFFMAN,

Clerk.

By W. B. Beazley,

Deputy Clerk.

[Endorsed]: Judgment-roll. Filed January 23, 1901.
Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, Northern District
of California.*

THE UNITED STATES,

Plaintiff,

vs.

CALIFORNIA DRY DOCK COM-
PANY,

Defendant.

Opinion.

Frank L. Coombs, United States Attorney, and Marshall B. Woodworth, Assistant United States Attorney, for Plaintiff.

Page, McCutchen, Harding & Knight, for Defendant.

What has long been known as "Mission Rock," situated in the bay of San Francisco, about one-half mile east of the shore of the land upon which the city of San Francisco is situated, consists of two islands of rocks projecting above high tide, having areas respectively of 14-100 and 1-100 acres. So far as known they have always been barren rocks with shores so steep that they are surrounded with very little land or rock that is uncovered by the tide. California's admission act of September 9, 1850, was similar in its provisions to those of the admission acts of other states. Claiming the title through

such admission act, to the submerged lands surrounding these rocks, the state by its legislature, on April 4, 1870, authorized the sale of the same to one Tichenor, and he having complied with all the conditions prescribed, did on July 11, 1872, receive from the state a patent for a tract of eight hundred feet square, surrounding these rocks "containing 14-3500 acres, exclusive of said rocks." By mesne conveyances the defendant now has whatever title to the premises the State could convey. The defendant has by the deposit of rock and other material filled in the space surrounding these rocks to such extent that the area above water is now, as shown by a map introduced by defendant and marked Exhibit No. 1, 3 and 9-10 acres including as is understood, the area of the original islands or rocks. The plaintiff brings this action for the possession of all the area conveyed by the State, and also that of the islands, being a total of 14 and 69-100 acres.

The question is, whether California had any title to what it attempted to convey. It cannot be doubted that "tide lands" become upon the admission of a State its property. It is sufficient to refer to but one of the many adjudications. *Illinois Central Railroad vs. Illinois*, 146 U. S. 435, says: "It is the settled law of this country that the ownership of and dominion and sovereignty over lands covered by tide waters within the limits of the several States belong to the respective States within which they are found, with the consequent right to use or dispose of any portion thereof when that can be done without substantial impairment of the interest of the public

in the waters, and subject always to the paramount right of Congress to control their navigation so far as may be necessary for the regulation of commerce with foreign nations and among the States." If any of the area surrounding these rocks is within the term "tide lands," it is evident from the testimony that but a small portion thereof is. The line around these islands to which the low tide recedes is not clearly fixed by the evidence. The only witness examined on this question, aided by plaintiff's maps, Exhibits "H" and "G," said there was originally "not very much" land around these rocks uncovered by the ebbing tide; that it "may vary from 10 to 25 feet, depending upon the steepness of the slope of the rock. That, however, is a mere estimate," Defendant's said Exhibit No. 1 has upon it an irregular line marked "Line of filling about level at low water," within which is included a total area of 3 and 9-100 acres, from which deducting that of the islands, 15-100 acres leaves 2 and 94-100 acres, which admitting defendant's showing as correct, is the maximum area which the State could convey. The State did attempt to convey, what under no theory of the law, could be termed tide lands, but which it conveyed as submerged lands. If it could do so, no reason exists why it may not convey as submerged lands the entire bottom of San Francisco bay.

Plaintiff claims that "tide lands" are only those adjoining the main land on the sea, on bays, inlets and arms of the sea, and that they do not include those lands surrounding islands, especially those in a bay. So far as my observation goes the government has always acquired

and retained the islands in the bays of important sea-ports for fortification and other governmental purposes. If the State can hold as tide lands a strip around such islands the Government would be absolutely excluded from its island possessions except by paying tribute to the State or its grantees. The defendant's counsel says the Government may meet such an emergency through its power to control the navigable waters for commercial purposes, and that the purchaser of such tide or submerged lands "would take the title, subject always to the control of the United States, over the waters covering them." This would be a circuitous way by which to protect the public or Government interests as well as through the exercise of arbitrary power; that it may be done the authorities seem to justify, but the same authorities also hold that the State can claim title to convey such tide lands only "when that can be done without substantial impairment of the interest of the public—the Government—to surround the islands in a bay, which it needs, with an adverse title. Plaintiff has cited a number of authorities in support of its claim that tide lands do not pertain to the shores of islands such as these, but they are not decisive of the question because it was not directly involved in any of the cases so far as I can observe.

As it has been held that tide lands cannot be controlled by the State to the detriment of the public welfare; as the islands within the bay of an important sea-port are of great value to the public and to the Govern-

ment, and as it is absolutely necessary that the approach to them must be unobstructed to make them available, the Court should hesitate to allow the claim made by the defendant unless supported by some clear statutory or judicial authority, and in the absence of either that is satisfactory, it must be and is held that the lands surrounding these islands were not within the denomination of tide lands, and that the State had no title thereto to convey.

The act of Congress approved July 1, 1864, 13 Stat. 332, by the fifth section, provided for the relinquishment to San Francisco of all lands within its limits, but it accepted from the operation of such relinquishment such lands as may be designated by the President within one year after the rendition to the general land office by the surveyor general of an approved plat of the exclusive limits of San Francisco. No such plat has yet been sent to the general land office, but the President did on January 13, 1889, designate these islands as permanently reserved for naval purposes thereby preserving to the Government the reservation of its rights provided by the statute.

As the very great importance of this case will lead to its final determination by higher courts, it is deemed unnecessary to enter largely into the discussion of the questions involved, and without further suggestion I content myself with the statement of my conclusion in favor of

judgment of possession for the plaintiff, which is accordingly ordered.

Dated this 11th day of December, 1900.

BEATTY,
Judge.

[Endorsed]: Filed December 14, 1900. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

In the United States Circuit Court, in and for the Ninth Circuit and Northern District of California.

THE UNITED STATES,

Plaintiff,

vs.

MISSION ROCK COMPANY, Substituted in place of California Dry Dock Company,

Defendant.

Bill of Exceptions.

Be it remembered that on the signing by the Court of the findings in the above-entitled cause and the order of judgment therein in favor of the plaintiff, the defendant by its attorneys duly assented to the facts of the cause as found by the Court and filed herein as its finding, but excepted to the ruling of the Court thereon declaring and deciding that judgment thereon should be entered in

favor of the plaintiff and not in favor of defendant as requested by it. And whereas the said exception does not otherwise appear of record, I have hereunto set my hand and seal this 2d day of January, 1901.

JAS. H. BEATTY.

We hereby agree to the correctness of the foregoing bill of exceptions.

FRANK L. COOMBS and

MARSHALL B. WOODWORTH,

Attorneys for Plaintiff.

PAGE, McCUTCHEN, HARDING & KNIGHT,

Attorneys for Defendant.

[Endorsed]: Filed January 23, 1901. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

In the United States Circuit Court, in and for the Ninth Circuit, Northern District of California.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

MISSION ROCK COMPANY (a Corporation),

Defendant.

Petition for Writ of Error.

Mission Rock Company, defendant in the above-entitled action, feeling itself aggrieved by the decision and judg-

ment of this Honorable Court entered in this cause on the 23d day of January, A. D. 1901, does through and by its attorneys, Page, McCutchen, Harding & Knight, respectfully petition and pray this Court for the allowance of a writ of error from said decision and judgment to the United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, under and according to the laws of the United States in that behalf made and provided; and also that an order may be made fixing the amount of security and bond which defendant should give and furnish upon said writ of error, and that upon the giving of said security and bond which defendant should give and furnish upon said writ of error, and that upon the giving of said security and bond all further proceedings in this court be suspended and stayed until the determination of said writ of error by said Circuit Court of Appeals in and for the Ninth Judicial Circuit, and prays that a transcript and record of the proceedings in the cause, duly authenticated, may be transmitted to said Circuit Court of Appeals.

Your petitioner and appellant herewith presents and files with the clerk of this Honorable Court its assignment of errors.

PAGE, McCUTCHEN, HARDING and KNIGHT,
Attorneys for Petitioner and Appellant.

Order Allowing Writ of Error.

It is ordered that the prayer of said petitioner be allowed and that said writ of error issue as prayed for.

WM. W. MORROW,

Judge.

[Endorsed]: Filed January 23, 1901. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

In the Circuit Court of the United States, for the Ninth Circuit, Northern District of California.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

MISSION ROCK COMPANY,

Defendant.

Assignment of Errors.

Now comes the defendant, Mission Rock Company, and files its assignment of errors in the above-entitled cause as follows, to wit:

1. That the Circuit Court erred in its decision and judgment that, upon the findings of fact made by it, the plaintiff was entitled to judgment against the defendant for the recovery of the premises described in the complaint.

2. That the Circuit Court erred in its decision and judgment that, upon the findings of fact made by it, the defendant was not entitled to judgment against the plaintiff.

3. That the Circuit Court erred in deciding that the title to that portion of the lands described in the complaint which was constantly covered by the tidal waters of the bay of San Francisco remained and was, after the admission of the State into the Union, in the United States and did not vest in the State of California.

4. That the Circuit Court erred in deciding that that portion of the lands described in the complaint and which are shown by the findings to have been and to be above the line of ordinary high water mark, were and are lands the title whereof was and remained, after the admission of the State of California into the Union, in the United States and not in the State of California.

5. That the Circuit Court erred in its decision and judgment holding and adjudging that the title to that portion of the lands described in the complaint which were constantly submerged by the tidal waters of the bay of San Francisco did not vest in the State of California on admission of the State into the Union.

6. That the Circuit Court erred in its decision and judgment holding and adjudging that the title to that portion of the lands described in the complaint which by the findings and evidence was shown to lie above the line of ordinary high tide, did not, on the admission of the State of California into the Union, vest in the said State.

7. That the Circuit Court erred in its decision and

judgment holding and adjudging that under the act of July 1, 1864 (13 Stat. 332) relinquishing to the city of San Francisco the lands described in said act, the United States excepted from such relinquishment the lands described in the complaint or any portion thereof.

8. That the Circuit Court erred in holding and adjudging that it was within the power of the President under the said act to designate the said lands, or any part of them, as excepted from the relinquishment made in said act.

9. That the Circuit Court erred in holding and adjudging that the title to the said lands described in the complaint did not vest under said act in the city of San Francisco.

10. That the Circuit Court erred in deciding and holding that after relinquishment of the title to said lands by the United States by said act, the title conveyed by said act was divested by the act of the President referred to in the findings.

11. That the Circuit Court erred in deciding and holding that the executive order of the President excepted from the grant to San Francisco more than the specific acreage of the lands sued for lying above high-water mark stated in the said order.

12. That the Circuit Court erred in deciding and holding that all of said lands in the complaint described were not part of the lands covered by navigable waters of the State of California.

13. That the Circuit Court erred in deciding and holding that the said lands described as lying above high-

water mark were lands which did not vest in the State on her admission into the Union.

14. That the Circuit Court erred in deciding and holding that an action of ejectment would lie for the recovery of lands the title to which had been fully relinquished by the United States in 1864 in favor of the city of San Francisco, subject to a right of subsequent reservation by the President.

15. That the Circuit Court erred in holding and deciding that the reservation in the said act of 1864 was not void, and that by the act of the President, nearly forty years later, reserving said lands, the title thereto again became vested in the United States.

PAGE, McCUTCHEN, HARDING and KNIGHT,
Attorneys for Defendant.

[Endorsed]: Filed January 23, 1901. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

In the United States Circuit Court, in and for the Ninth Circuit, Northern District of California.

THE UNITED STATES OF AMERICA,
 IOA,

Plaintiff,

vs.

MISSION ROCK COMPANY (a Corporation),

Defendant.

Order Staying Proceedings.

The defendant, Mission Rock Company, having this day filed its petition for a writ of error from the decision and judgment of this Court entered herein, to the United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, and also praying that an order be made fixing the amount of security which defendant should give and furnish upon said writ of error, and that upon the giving of said security, all further proceedings of this Court be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, and said petition having this day been allowed:

Now, therefore, it is ordered that upon the said defendant, Mission Rock Company, filing with the clerk of this court a good and sufficient bond in the sum of twenty-

five thousand dollars, said bond to be approved by the Court, that all further proceedings in this court be, and they are hereby suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals.

Dated January 23, 1901.

WM. W. MORROW,
Judge.

[Endorsed]: Filed January 23, 1901. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

Supersedeas and Cost Bond on Writ of Error.

Know all men by these presents, that Mission Rock Company, a corporation, as principal, and Pacific Surety Company, a corporation, as surety, are held and firmly bound unto the United States of America, in the full and just sum of twenty-five thousand dollars, to be paid to the said the United States of America, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 30th day of January, in the year of our Lord one thousand nine hundred and one.

Whereas, lately, in the Circuit Court of the United States, in and for the Ninth Circuit, Northern District of California, in a suit pending in said court between the United States of America, plaintiff, and Mission Rock Company, a corporation, defendant, judgment was ren-

dered and entered on the 23d day of January, A. D. 1901, against the said defendant Mission Rock Company, a corporation, and in favor of said plaintiff, and the said defendant, Mission Rock Company, a corporation, having obtained from the said court its writ of error to reverse the judgment in the aforesaid suit, and a citation directed to the above-named plaintiff, citing and admonishing it to appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California:

Now, the condition of the above obligation is such that if the said Mission Rock Company, a corporation, defendant (plaintiff in error), shall prosecute the said writ to effect, and answer all damages and costs, and all sums of money that may be recovered for the use and detention of the property and the costs of suit and just damages for delay, if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[Corporate Seal of Mission
Rock Company.]

MISSION ROCK COMPANY.

By WM. BABCOCK,
President.

W. F. RUSSELL,
Secretary.

PACIFIC SURETY COMPANY.

[Corporate Seal of Pacific
Surety Company.]

By WALLACE EVERSON,
President.

A. P. REDDING,
Secretary.

[Internal Revenue Stamps to the Amount of 62½ c. Attached and Canceled.]

United States of America,
State of California,
City and County of San Francisco. } ss.

Personally appeared before me, A. P. Redding, on this thirtieth day of January, one thousand nine hundred and one, known to me to be the secretary of the Pacific Surety Company, the corporation described in and which executed the annexed bond of Mission Rock Company, defendant, as surety thereon, and who, being by me duly sworn, deposes and says: That he resides at Menlo Park in the State of California; that he is the secretary of the said Pacific Surety Company, and knows the corporate seal thereof; that said company is duly and legally incorporated under the laws of the State of California; that said company has complied with the provisions of the act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of Mission Rock Company, defendant, is the corporate seal of the said Pacific Surety Company, and was thereto affixed by order and authority of the board of directors of said company; that he signed his name thereto by like order and authority as secretary of said company; that he is acquainted with Wallace Everson and knows him to be the president of said company; that the signature of said Wallace Everson subscribed to said bond is in the genuine handwriting of said Wallace Everson, and was thereto subscribed by order and authority of said board of directors, and in

the presence of said deponent; and that the assets of said company, unincumbered and liable to execution, exceed its claims, debts and liabilities, of every nature whatsoever, by more than the sum of two hundred and fifty thousand dollars (\$250,000.00).

[Corporate Seal of Pacific
Surety Company.]

A. P. REDDING.

Sworn to, acknowledged before me, and subscribed in my presence this 30th day of January, 1901.

[Notarial Seal]

O. A. EGGERS,

Notary Public in and for the City and County of San Francisco, State of California.

Whereas, the Pacific Surety Company, a corporation duly incorporated under the laws of the State of California, has deposited with me its charter or articles of incorporation and the statement required by section 3 of an act of Congress approved August 13, 1894, entitled, "An act relative to recognizances, stipulations, bonds and undertakings, and to allow certain corporations to be accepted as surety thereon"; and has satisfied me that it has authority under its charter to do the business provided for in said act; that it has a paid-up capital of not less than \$250,000 in cash or its equivalent, and that it is able to keep and perform its contracts:

Now, therefore, the said Pacific Surety Company is hereby granted authority to do business under said act in the said State of California, and is also granted authority to do business under said act beyond the limits of said State in any Judicial District of the United States in

which it shall first have appointed an agent conformably to the provisions of section 2 of said act.

JOHN W. GRIGGS,
Attorney General.

Department of Justice, Washington, D. C., November 25, 1898.

[Seal]

Department of Justice, Washington, D. C.,
April 18, 1900.

[10 c. Int. Rev. Stamp Hereto Attached and Canceled.]

The annexed is a true copy of an original authorization to do business, issued by the Attorney General under the act of Congress approved August 13, 1894.

Witness my hand and seal of the Department.

[Seal of Department
of Justice.]

CECIL CLAY,
Chief Clerk.

[Endorsed]: The form of the within bond and the sufficiency of the surety approved this 30th day of January, 1901.

WM. W. MORROW,
Judge.

Filed January 30, 1901. Southard Hoffman, Clerk.
By W. B. Beazley, Deputy Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

MISSION ROCK COMPANY (a Corporation), Substituted for California Dry Dock Company,

Defendant.

No. 12,817.

Clerk's Certificate to Record.

I, Southard Hoffman, Clerk of the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California, do hereby certify the foregoing forty-six (46) written pages, numbered from 1 to 46 inclusive, to be a full, true and correct copy of the record and of the proceedings in the above and therein entitled cause, as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is \$28.00, and that said amount was paid by the attorneys for the defendant above-named.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this 6th day of February, A. D. 1901.

[Seal]

SOUTHARD HOFFMAN,

Clerk of United States Circuit Court, Ninth Judicial Circuit, Northern District of California.

[Ten Cent U. S. Int. Rev. Stamp. Canceled.]

Writ of Error.

UNITED STATES OF AMERICA—ss.

The President of the United States, to the Honorable, the Judges of the Circuit Court of the United States for the Ninth Circuit, Northern District of California, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between Mission Rock Company, a corporation, defendant and plaintiff in error, and United States of America, plaintiff and defendant in error, a manifest error hath happened, to the great damage of the said Mission Rock Company, a corporation, plaintiff in error, as by its complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if

judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the 12th day of February next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the 30th day of January, in the year of our Lord one thousand nine hundred and one.

[Seal]

SOUTHARD HOFFMAN,
Clerk of the Circuit Court of the United States, for the
Ninth Circuit, Northern District of California.

Allowed by:

WM. W. MORROW,

Judge.

Service of within writ and receipt of a copy thereof is hereby admitted this 30th day of January, A. D. 1901.

FRANK L. COOMBS and

MARSHALL B. WOODWORTH,

Attorneys for Defendant in Error.

The answer of the Judges of the Circuit Court of the United States of the Ninth Judicial Circuit, in and for the Northern District of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

SOUTHARD HOFFMAN,

Clerk.

[Endorsed]: No. 12,817. Circuit Court of the United States, Ninth Circuit, Northern District of California. Mission Rock Company (a Corporation), Plaintiff in Error, vs. United States of America, Defendant in Error. Writ of Error. Filed January 30, 1901. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

Citation.

UNITED STATES OF AMERICA—ss.

The President of the United States, to the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, on the 12th day of February next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States, Ninth Circuit, Northern District of California, in a certain action numbered 12,817, wherein Mission Rock Company, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable WILLIAM W. MORROW, Judge of the United States Circuit Court, Ninth Circuit, Northern District of California, this 30th day of January, A. D. 1901.

WM. W. MORROW,
Judge.

Service of within citation and receipt of a copy thereof is hereby admitted this 30th day of January, 1901.

FRANK L. COOMBS and
MARSHALL B. WOODWORTH,
Attorneys for Defendant in Error.

[Endorsed]: No. 12,817. Circuit Court of the United States, Ninth Circuit, Northern District of California. Mission Rock Company (a Corporation), Plaintiff in Error, vs. The United States of America, Defendant in Error. Citation. Filed January 30, 1901. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

[Endorsed]: No. 682. In the United States Circuit Court of Appeals for the Ninth Circuit. Mission Rock Company (a Corporation), Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. In Error to the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the Northern District of California.

Filed February 6, A. D. 1901.

F. D. MONCKTON,
Clerk.

